

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:07CR32
)	
vs.)	ORDER
)	
ENOCH PITTMAN,)	
)	
Defendant.)	

This matter is before the court on the motion of defendant Enoch Pittman (Pittman) to file pre-trial motions out of time (Filing No. 27). Pittman's counsel represents that government's counsel has no objection to the motion. Pittman filed a duplicate of the motion with attachments (Filing No. 28). The attachments are denominated as various motions as follows:

- Exhibit A: Motion to Compel Government to Specify Evidence;
- Exhibit B: Motion for Disclosure of Agreements;
- Exhibit C: Discovery Motion - Extraneous Acts;
- Exhibit D: Discovery Motion - Extraneous Acts (Duplicate);
- Exhibit E: Motion for Discovery and Inspection;
- Exhibit F: Motion for Jury Questionnaire;
- Exhibit G: Motion to Require Prosecution to Reveal Agreements;
- Exhibit H: Motion for Early Disclosure of Jencks Act Materials;
- Exhibit I: Motion to Incorporate and Adopt Motions of Co-Defendants;
- Exhibit J: Motion in Limine Regarding Extrinsic Acts;
- Exhibit K: Motion for Witness Statements;
- Exhibit L: Motion Proposing Voir Dire Questions to Prospective Jurors;
- Exhibit M: Motion for Notice of Electronic or Mechanical Surveillance; and
- Exhibit N: Motion to Sever Defendants.

These exhibits set forth the pre-trial motions Pittman wishes to file. Pittman will be given leave to file pre-trial motions; however, the court will address each of the proposed motions *seriatim*.

NECrimR12.3(b)(3) provides as follows:

(3) Discovery Motions. In the case of a motion seeking discovery or disclosure of evidence, the motion must include a statement verifying that counsel for the moving party has conferred with opposing counsel in person or by telephone in a good-faith effort to resolve by agreement the issues raised by the motion and that the parties have been unable to reach such an agreement. This showing shall also recite the date, time, and place of such communications and the names of all persons participating in them. As used in this rule, "counsel" includes parties who are acting pro se.

Further, paragraph 3 of the progression order (Filing No. 16) requires similar consultation with opposing counsel. The court considers the proposed motions set forth in Exhibits B, C, D, E, G, H, K, and M to be discovery motions. None of these proposed motions contain or suggest Pittman's counsel has attempted to resolve these matter by a personal conference with government's counsel and has not recited any dates and times of such conferences as required by the local rule stated above. Accordingly, Pittman may not file such motions unless the motion contains the required consultation provisions as set forth above.

Exhibit A is a proposed motion for the court to order the government to specify the evidence the government will use at trial. The proposed motion is premised upon Fed.R.Crim.P. 12(d)(2). However, Pittman has not alleged in his proposed motion that he has made a request of the government for the government's intention to use such evidence as contemplated by Rule 12(d)(2) and that the government has ignored Pittman's request. Absent such predicate, Pittman will not be allowed to file a motion as phrased in Exhibit A.

Exhibit I is a proposed motion to adopt any motions by co-defendants. Such a request will be denied if filed.

Exhibit J is a proposed motion regarding the government's use of extrinsic acts. Again, Pittman has not set forth that he has requested such information from the government and the government has failed to respond. Absent such showing, Pittman may not file such a motion as set forth in proposed Exhibit J.

IT IS ORDERED:

Pittman's motions to file pretrial motions (Filing Nos. 27 and 28) are granted and denied to the extent set forth below:

1. Exhibit F is a proposed motion for a jury questionnaire. Pittman may file such a motion.
2. Exhibit N is a proposed motion to sever defendants. Pittman may file such motion. Pittman may file the proposed motions as set forth in Exhibits F and N **on or before March 21, 2007.**
3. Pittman may file motions as set forth in Exhibits A, B, C, E, G, H, J, K, and M only after compliance with the requirements of NECRimR 12.3 and Fed. R. Crim. P. 12(d)(2) **on or before March 23, 2007.**
4. Pittman may file a motion as set forth in Exhibit L **five business days before the commencement of trial.**
5. Pittman's request to file a motion as set forth in Exhibit I is denied.
6. The government shall have **to on or before March 30, 2007** in which to respond to any motions filed by Pittman as set forth above.

DATED this 14th day of March, 2007.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge